

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
M. A. SEGALE, INC.,

Appellant,

v.

PUGET SOUND AIR POLLUTION  
CONTROL AGENCY,

Respondent.

PCHB No. 78-155

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the appeal from the issuance of a \$250 civil penalty for the alleged violation of Section 8.06(3) of respondent's Regulation I, came before the Pollution Control Hearings Board, Chris Smith and David Akana (presiding), at an informal hearing in Seattle, Washington on September 21, 1978.

Appellant was represented by Richard R. Kammerer, its Branch Manager; respondent was represented by its attorney, Keith D. McGoffin.

Having heard the testimony, having examined the exhibits, and having considered the contentions of the parties, the Pollution Control

DA/DO

1 Hearings Board makes these

2 FINDINGS OF FACT

3 I

4 Pursuant to RCW 43.21B.260, respondent has filed with the Board a  
5 certified copy of its Regulation I and amendments thereto which are  
6 noticed.

7 Section 8.06(3) of the regulation provides that it shall be unlawful  
8 to cause or allow an outdoor fire for land clearing burning within a  
9 defined urbanized area unless respondent has verified that the average  
10 population density within 0.6 miles of the site is 2,500 persons per  
11 square mile, or less.

12 Section 3.29 provides for a civil penalty of up to \$250 per day  
13 for each violation of Regulation I.

14 II

15 On May 25, 1978, appellant was conducting open burning of stumps  
16 and other natural vegetation resulting from land clearing near First  
17 Avenue South and the West Valley Highway in the City of Algona. The  
18 site of the fire was on or near a burning site used earlier by other  
19 persons to burn an old residence. The site is located within an  
20 urbanized area as defined by Section 8.06(3).

21 Appellant had previously secured a permit for its fire from the  
22 City of Algona. The City has a population of about 2,700 persons.

23 III

24 On May 25, 1978, respondent's agent observed the instant fire.  
25 Because appellant did not possess a population density verification  
26 from respondent, a notice of violation and a \$250 civil penalty were

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER 2

1 issued to appellant.

2 IV

3 Appellant has been cited for a violation of Section 8.06(3)  
4 previously and under similar circumstances. Due to the press of  
5 business, it did not appeal the penalty. Appellant was and is aware  
6 of the provisions of Section 8.06(3) of Regulation I.

7 V

8 Any Conclusion of Law which should be deemed a Finding of Fact  
9 is hereby adopted as such.

10 From these Findings the Board comes to these

11 CONCLUSIONS OF LAW

12 I

13 Appellant violated Section 8.06(3) of Regulation I on May 25, 1978  
14 by failing to secure a population density verification from respondent  
15 prior to conducting its outdoor fire.

16 II

17 Section 8.01 of Regulation I allows outdoor fires on a limited  
18 basis under strict regulation and close control, and is to be  
19 administered under a one-permit system. See also RCW 70.94.745.  
20 Appellant reasonably fulfilled its obligation to secure the necessary  
21 permits from the City of Algona. It received permission to burn and  
22 relied on its permit when burning. Although we conclude that respondent's  
23 regulation has been violated, appellant should not be required to pay  
24 the assessed penalty under the circumstances of this case.

25 III

26 Any Finding of Fact which should be deemed a Conclusion of Law

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 is hereby adopted as such.

2 From these Conclusions, the Board enters this

3 ORDER

4 The \$250 civil penalty is affirmed, but payment thereof is totally  
5 suspended.

6 DATED this 5<sup>th</sup> day of October, 1978.

7 POLLUTION CONTROL HEARINGS BOARD

8 Chris Smith

9 CHRIS SMITH, Member

10 David Akana

11 DAVID AKANA, Member

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FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER